IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16/11/2004

CORAM

THE HONOURABLE MR. JUSTICE N.V.BALASUBRAMANIAN
AND
THE HONOURABLE MRS. JUSTICE R. BANUMATHI

W.P.No.21585 of 2000
and W.P.Nos. 21588, 21589 and 21613 of 2000
and
W.P.M.P.Nos.31355, 31358, 31359 and 31396 of 2000

Sudarsanam Spinning Mills,
Post Box 2,
120, P.S.K.Nagar,
P.A.C.Ramasamy Raja Salai,
Rajapalayam 626 117.
Virudhunagar District. .....Petitioner in
W.P.No.21585 of 2000

Rajapalaiyam Spintext,
(EOU Division of Rajapalayam
Mills Ltd.,)
Post Box No.1,
P.A.C.Ramasamy Raja Salai,
Rajapalayam 626 117.
Virudhunagar District. .....Petitioner in
W.P.No.21588 of 2000

Sri Vishnu Shankar Mill Ltd.,
Post Box No.109,
P.A.C.Ramasamy Raja Salai,
Rajapalayam 626 117.
Virudhunagar District. .....Petitioner in
W.P.No.21589 of 2000

Sri Ramco Spinners,
(A Division of Ramco Industries
Ltd.,)
Krishnapuram Road,
Off: P.A.C.Ramasamy Raja Salai,
Rajapalayam 626 117.
Virudhunagar District. .....Petitioner in
W.P.No.21613 of 2000

-Vs-

1. Tamil Nadu Pollution Control
Board, rep. by its
Member Secretary,
32, Santhome High Road,
Chennai 600 004.

2. The Joint Chief Environmental
Engineer,
Tamil Nadu Pollution Control
Board,
S.No.668-669, SIDCO Industrial
Estate, Kappalur,
Madurai 625 008. .....Respondents in
all W.Ps

Writ Petitions filed under Article 226 of the Constitution of India,
praying for issuance of a Writ of Certiorari, as stated therein.

For Petitioners:: Mr. M. Elumalai

For Respondents:: Mrs.Rita Chandrasekar

:O R D E R

R. BANUMATHI, J.

All the Writ Petitions have been filed by the Petitioners for issuance of Writ of Certiorari to call for the records of the Second Respondent and to quash the Impugned Notice No.,/K/R/ebgh/-jkhfth-kJiu-nfh1 2-M-bg-tpUJ-2000 dated 15.11.2000 and other notices in the respective Writ Petitions.

2. The Petitioners Mills Export oriented Units situated at Rajapalayam, Virudhungar District have employed number of workmen. They are engaged in the manufacture of sale of Cotton Yarn and they do not have either Weaving Department or Processing Sections like Weaving, Bleaching, Dyeing and Printing. According to the Petitioners, their Mills are Spinning Units with no Weaving Department and Processing Sections. To tide over the power shortage, the Petitioners have installed Diesel Generator sets. The Petitioners / Mills have obtained Consent Orders Nos.7226, 3353, 7066 and 3354 Dated 31.12.1992, 05.03.1991, 04.11.1992 and 05.03.1991 respectively from the First Respondent / Tamil Nadu Pollution Control Board for installation of Diesel Generator Sets. Due to tremendous scientific and technological advancement in the manufacture of captive generator sets, for more efficiency, the Mills used Furnace Oil Generators. Generation of power through Furnace Oil Generator is found to be purer and more sufficient. Installation of Furnace Oil Generator is only replacement of Diesel Generator sets already installed, which have become old. The replacement of the existing plant and machineries with new ones does not require a fresh Consent Order from the First Respondent / Pollution Control Board, especially when the replacement more efficiently eliminates Air and Atmospheric pollution and Noise pollution.

3. While so, without taking into account that the new Generator sets are only replacement of the existing Generator sets, the First Respondent had issued the impugned notices. The Impugned Notices are assailed on the ground that they suffer from serious error of law as well as fact that the replacement of the existing machineries requires fresh consent from the First Respondent.

4. Contention of the Petitioners Mills is that no fresh Consent Order is necessary for installation of Furnace Oil Generators, which only replaces Diesel Generator Sets. While so, the First Respondent / Pollution Control Board has issued the Impugned Notices dated 15.11.200 0 to the respective Writ Petitioners stating that there is violation of Sec.21 of The Air (Prevention & Control of Pollution) Act, 1981 (hereinafter referred to as the Air (P&CP) Act), calling upon the Petitioners to show cause as to why Prosecution should not be launched against them. These Writ Petitions have been filed by the Writ Petitioners, challenging the Impugned Notices on the ground that they are highly arbitrary and unreasonable.

5. Assailing the Impugned Notices in the respective Writ Petitions, learned counsel for the Petitioners has contended that the Second Respondent has failed to take into account that the installation of New Generator Sets Furnace Oil Generators are only replacement of existing one of old Diesel Generator Sets. The contention of the counsel is that when the Petitioners have earlier obtained the Consent Orders from the First Respondent / Pollution Control Board for installation of Diesel Generator Sets, replacement of the same by fuel efficacious methods eliminating the Atmospheric pollution needs no fresh consent. Urging that no fresh Consent Order is essential, learned counsel for the Petitioners assailed the Impugned Notices that Notice is more in the nature threatening to launch Prosecution than issuance of Show Cause notice and prayed to quash the same.

6. Onbehalf of the First Respondent / Pollution Control Board, it is submitted that though the Petitioners / Mills have earlier obtained Consent Orders, even if there is any change or replacement of the Unit by modern unit, fresh Consent Order is very much essential. Taking us through Rule 5(iii) of The Environment (Protection)Rules, 1986 and other provisions of the Air (P&CP) Act, learned counsel for the First Respondent has submitted that even for replacement of the Diesel Generator sets, it is very much necessary to obtain the Consent.

7. We have carefully considered the submissions of both sides. For the purpose of determining the issue raised in these Writ Petitions, it is appropriate to refer to the Provisions of the Air (P&CP) Act. Sec.2(a) of the Air (P&CP) Act defines air lutant as under:-
....air pollutant means any solid, liquid or gaseous substance (including noise) present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment...
Sec.2(c) of the Air (P&CP) Act defines approved appliances to mean any equipment of gadget used for the bringing of any combustible material or for generating or consuming any fume, gas of particulate matter and approved by

the State Board for the purpose of this Act. The words control equipment has been defined in Sec.2(i) of the Air (P&CP) Act to mean any apparatus, device, equipment or system to control the quality and manner of emission of any air pollutant and includes any device used for securing the efficient operation of any industrial plant. Sec.2(k) of the Air (P&CP) Act defines industrial plant to mean that any plant used for any industrial or trade purposes and emitting any air pollutant into the atmosphere.

8. To the show cause notices, the Petitioners sent reply dated 04.12 .2000. In their reply, the Petitioners have stated that as advised by the Government, every textile mill and industrial establishment has installed diesel power generator sets several decades ago and those generator sets are periodically replaced as and when necessary. They have further stated that in recent times a number of textile

mills have replaced the existing Diesel generator sets with generator sets using furnace oil. Thus, onbehalf of the Petitioners it is mainly urged that the replacement of the existing Diesel Generator sets with the Generator sets using furnace oil is used for efficient operation of any Industrial Unit. Furnace oil Generator is any apparatus, device ..... and includes any device used for securing the efficient operation of any Industrial Plant. We are of the view that the Generators using furnace oil falls within the meaning of control equipment as defined in Sec.2(i) of the Air (P&CP)Act.

9. Sec.21 of the Air (P&CP) Act deals with Restrictions on use of certain Industrial Plants and mandates obtaining previous consent of the State Board. Sec.21(1) of the Air (P&CP) Act reads as under:-
...Subject to the provisions of this Section, no person shall, without the previous consent of the State Board, establish or operate any industrial plant in an air pollution Control Area....
The point for consideration is whether such consent of the State Board is essential for replacement of the Unit / Generator set.

10. As per Sec.21(5)(ii) of the Air (P&CP) Act, the existing control equipment, if any, shall be altered or replaced in accordance with the directions of the State Board. By any normal interpretation of the language shall be altered or replaced in accordance with the directions of the State Board, we find that the Consent of the State Board for replacement is essential.

11. Consent Orders issued by the First Respondent contains the General Conditions. Clause 5 of the General Conditions deals with alteration or replacement of Control equipment or Chimney. Clause 5 reads as follows:-
...No control equipment or chimney shall be altered or replaced or as the case may be erected or re-erected except with the previous approval of the Board...
The Petitioners / Mills operating in the Pollution free area are bound by Sec.21(5)(ii) of the Air (P&CP) Act and clause 5 of the General Conditions imposed in the Consent Orders. For alteration and replacement of the existing control equipment, obtaining previous consent of the First Respondent / Board is very much essential. While so, it is not open to the Petitioners to

contend that for replacement of the existing equipment, no application need be made for obtaining fresh consent.

12. Learned counsel for the Petitioners has submitted that the Furnace Oil Generator set installed by the Petitioners are fully efficient and that there is no air pollution and no fresh consent is necessary regarding the Air (P&CP) Act and The Environment (Protection) Act, 1 986. This contention of the Petitioners does not merit acceptance. SCHEDULE I of The Environment (Protection) Act, 1986 deals with Category of Thermal Power Plants Requiring Environmental Clearance from the State Government. The Co-Generation Captive Plants is one such category which require environmental clearance from the State Government. As per SCHEDULE I, Co-Generation Captive Plants means:
(i)
Co-Generation Plants
All Co-generation Plants irrespective of the installed capacities.
(ii)
(Omitted)
(Omitted)

13. Though the Generator using furnace oil is claimed to be more fuel efficient, the fact remains it is a co-generation plant, which requires environmental clearance from the State Government / Board. The contention of the Petitioners that the permission earlier obtained in the Consent Orders Nos.7226, 3353, 7066 and 3354 Dated 31.12.1992, 0 5.03.1991, 04.11.1992 and 05.03.1991 respectively from the First Respondent / Tamil Nadu Pollution Control Board for installation of Diesel Generator Sets would be sufficient for any kind of replacement or alteration of the Generator sets or equipment has no force. The Petitioners are not right in contending that the Petitioners having obtained the Consent Orders, the same would cover any kind of replacement of the equipment, Furnace Oil Generator.

14. Sec.24 of the Air (P&CP) Act deals with Power of Officers of the State Board to enter, inspect any place, to perform the functions of the State Board. The said power includes examining, testing, seizing any control equipment, plants and documents. Any person delaying or obstructing the officers of the Board in discharge of his duties will be guilty of an offence. Since the persons empowered by the State Board have the right of inspection, onbehalf of the Petitioners it is contended that the First Respondent / Pollution Control Board could enter and examine and could very well test the Furnace Oil Generator rather than issuing the show cause notice alleging violation of Sec.2 1 of the Air (P&CP) Act and calling upon the Petitioners Mills to show cause as to why the Prosecution should not be launched against them under Sec.37 of the Air (P&CP) Act. This contention cannot be countenanced. Though the persons empowered by the State Board have the right of entering and inspection, the Petitioners cannot ask the First Respondent to make their own entry and inspect the newly installed Furnace Oil Generator. It is not the function of the First Respondent to investigate and find out whether the machineries already installed have become old and whether the replaced Generator sets using furnace oil is more fully efficient as claimed by the Petitioners. It is for the Petitioner Mills to satisfy the Board about the efficient functioning replaced generator sets using furnace oil. This

could be done by making out necessary application and in accordance with the directions of the State Board in compliance with Sec.21(5)(ii) of the Air (P&CP) Act. The First Respondent is well within the limits to issue the show cause notice for the alleged violation of Sec.21 of the Air (P&CP) Act.

15. The show cause notice is assailed mainly on the ground that the Generator sets using furnace oil replaced are fully efficient and installed elsewhere in every Textile Mill and Industrial Establishment are working without any Pollution and hence, installation of Furnace Oil Generator would not cause Air Pollution. Whether the operation of Furnace Oil Generator would be injurious to human beings or other living creatures or plants or property or environment remains to be seen. It is for the Tamil Nadu Pollution Control Board to determine by employing appropriate checking measures to determine whether the Furnace Oil Generators is emitting foul smell or not. Only the Pollution Control Board could check whether the Generator sets using Furnace Oil are emitting any □air pollutant□ within the meaning of Sec.2(a) of the Air (P&CP) Act. The mere statement of the Petitioners that the Generator Sets using Furnace Oil installed in other Textile mill are working satisfactorily without causing air pollution is not sufficient.

16. The Petitioners contend that the issuance of the show cause notice would hamper the working of the Textile Mill and that the negative attitude on the part of the Board would hamper the Industrial growth. Saving the environment cannot be sacrificed at the cost of promoting the Industrial Growth. Since the First Respondent is well within the rights in issuing the show cause notices, we are not inclined to quash the Impugned Notices. However, since the Show Cause Notices are want of details of nature of violation, we are inclined to give the following directions.

17. As per Sec.21(5)(ii) of the Air (P&CP) Act, existing control equipment shall be altered or replaced in accordance with the directions of the State Board. For replacement of the Diesel Generator sets with Furnace Oil Generator, the Petitioners ought to make out applications to the First Respondent stating the nature of the Furnace Oil Generator and the Fuel efficiency etc., which may be considered by the First Respondent in accordance with law.

18. With the above directions, all the Writ Petitions are disposed of. No costs.
Consequently, the connected W.P.M.P.Nos.31355, 31358, 31359 and 3139 6 of 2000 are dismissed.

Index: Yes
Internet: Yes

Dpn/-

To:

1. Tamil Nadu Pollution Control
Board, rep. by its
Member Secretary,
32, Santhome High Road,
Chennai 600 004.

2. The Joint Chief Environmental
Engineer,
Tamil Nadu Pollution Control
Board,
S.No.668-669, SIDCO Industrial
Estate, Kappalur,
Madurai 625 008.